STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 21, 2003
v	No. 240337 Branch Circuit Court
STANLEY MOTHENE MILLER, Defendant-Appellant.	LC No. 01-087368-FC

Before: Griffin, P.J., and Neff and Murray, JJ.

PER CURIAM.

Defendant was convicted of three counts of first-degree criminal sexual conduct, MCL 750.520b(1)(f). He was sentenced to concurrent terms of thirty-two to fifty-five years' imprisonment for each conviction. He appeals as of right. We affirm defendant's convictions, but vacate his sentences and remand for resentencing.

At approximately 1:30 a.m. on June 13, 2001, the second day of the sixteen-year-old victim's summer vacation from school, she left her family home to retrieve a compact disc from her automobile. When the victim walked between her house and the garage, someone picked her up and placed a hand over her mouth. The person, who the victim later determined was a man, carried her around to the side of the house. The victim struggled and began experiencing difficulty breathing. The man threatened her with death. During the incident, the victim noticed that her attacker was wearing ankle-high work boots. She also saw the man's hands and determined that he was Caucasian.

At some point, the victim fell down by an air conditioning unit. Her glasses were knocked off of her face and her shirt was pulled over her head. She felt the man's chest press against her back and noted that it was bare and was hairy. She concluded that the man was naked except for his boots. She estimated that his height was five feet, nine inches, and she believed that he had shoulder-length hair and facial stubble that was three to five days old.

The man forced the victim onto her neighbor's property and to an area near the lake. He removed her pants and underwear. He penetrated her vagina with his fingers, placed his mouth on her vagina, and later penetrated her vagina with his penis. The victim felt cement on her back during the assault. She testified that, in response to her crying, the man told her to "shut up" and threatened her with death.

After assaulting the victim, the man forcibly walked the victim to another area and debated whether to kill her. Eventually, he made her get on the ground, told her to stay down and count to one hundred, and threatened to return to kill her if the police came to her house. The victim counted to one hundred before getting up and going home. She was afraid to tell her parents what occurred because she believed the man would return to her house as promised. When the victim's sister returned home at approximately 2:30 a.m., the victim broke down and recounted the incident. The victim was in shock and was terrified. Her sister notified their parents.

After the police were notified, a rape kit procedure was completed on the victim. The victim suffered two vaginal tears, an abrasion on her back, a scratch on her face, and psychological trauma, which necessitated drug therapy and counseling. She later became suicidal.

The police investigated the area near the victim's house shortly after being informed of the incident. They noted footprint paths in the dewy grass, which led to an area by the neighbor's concrete slab where the victim believed the assault occurred. An evidence technician determined that someone knelt on the ground, rubbing or moving his knees near the concrete slab. He opined that whoever committed the crime would have injuries to his knees.

The police also canvassed the neighborhood. The victim's only immediate neighbor informed the police, and testified at trial, that at approximately 1:45 a.m., she heard noise outside of her home. She could not understand what was being said, but she heard a disciplinary-type tone being spoken and she heard whimpering. She did not investigate because she assumed that a neighbor was disciplining a new puppy. The police also spoke with Adam Carpenter. He informed the police, and testified at trial, that at approximately 12:30 a.m. on June 13, 2001, he went to the storage barns located near the entrance of the lengthy street where both he and the victim lived. He saw a car parked near the storage area. He wrote down the license plate number, the color, and type of car. It was a red Nissan 300ZX with an Indiana license plate. Carpenter had a habit of writing down information whenever he saw a suspicious car in the area. At approximately 2:30 a.m., while returning home from a friend's house, Carpenter noted that the car was no longer parked by the storage area. The police also received information that a third person in the neighborhood saw a car parked by the storage area at approximately 1:45 a.m. When the police used a K-9 to track at the scene, the dog tracked a scent from the area where the assault occurred to an area by the storage barns. The track actually went behind a shed, came out in front of a shed, and abruptly stopped at the roadway.

The license plate of the red car was registered to a business in Steuben County, Indiana. Two Michigan State Police troopers and a Michigan State Police detective went to the business and learned that the vehicle belonged to defendant. Defendant agreed to speak with the officers, but not before he tried to leave the premises through a side door. He was extremely nervous and shaking uncontrollably. The officers noted that his physical characteristics were similar to those described by the victim. Defendant admitted that he was parked near the storage area the previous night, but he claimed that he met a married woman there and spent the evening with her. He did not provide a full name for the woman. When defendant showed his legs to the officers, they noted that he had fresh scrapes and marks around his knees. Bodily samples were subsequently taken from defendant under authority of a search warrant.

Laboratory analysis of the victim's vaginal swab revealed evidence of saliva, which indicated that oral sexual conduct may have occurred. Defendant's penile swab contained mixed DNA. The male fraction of the DNA matched defendant's DNA. The female fraction matched the victim's DNA with a probability of 1 in 50.2 quadrillion in the Caucasian population, 1 in 1.2 quintillion in the African-American population, and 1 in 352.4 quadrillion in the Hispanic population. The DNA profile that matched the victim on defendant's penile swabs was a very rare profile. The expert testimony of DNA evidence offered by the prosecution was unrebutted by the defense.

In defendant's opening statement, counsel admitted that there was sexual contact with the victim on the night of the incident. In monitored telephone calls made by defendant from the Branch County Jail to his girlfriend, defendant suggested that the victim "came on" to him and that he did not know how old she was until the police told him. At trial, defendant offered numerous witnesses to testify about his nonviolent character, and his counsel argued that any sexual contact with the victim was consensual. The jury convicted defendant as charged.

I

Defendant challenges the trial court's decision denying his motion to suppress evidence, which was obtained under authority of Indiana search warrants issued by an Indiana court. We review the trial court's findings of fact on a motion to suppress for clear error and review the ultimate decision to suppress de novo. *People v Darwich*, 226 Mich App 635, 637; 575 NW2d 44 (1997). A ruling is clearly erroneous if this Court is left with a definite and firm conviction that the trial court made a mistake. *People v Hampton*, 237 Mich App 143, 148; 603 NW2d 270 (1999).

First, defendant claims that, under Indiana law, an affidavit based on hearsay and mere conclusions is insufficient to establish probable cause, and thus, a search warrant issued on the basis of such an affidavit is fatally defective. Defendant asserts that the search warrant in this case was based on an affidavit supported "almost totally on hearsay" and that the affidavit did not contain information establishing that the totality of the circumstances corroborated the hearsay or that the source of information was credible and had a factual basis.

Under Indiana law, probable cause to search is established when a sufficient basis of fact exists to permit a reasonably prudent person to believe that a search will uncover evidence of a crime. *Sisk v State*, 785 NE2d 271, 274-275 (Ind App, 2003). "[P]robable cause requires only that the information available to the officer would lead a person of reasonable caution to believe that the items [to be searched] could be useful as evidence of a crime." *Jones v State*, 783 NE2d 1132, 1136 (Ind, 2003). Probable cause may be based on collective information known to the law enforcement organization as a whole, which information may be imputed to the officer signing the affidavit. *Rios v State*, 762 NE2d 153, 163 (Ind App, 2002); *Williams v State*, 528 NE2d 496, 500 (Ind App, 1988). "The warrant statute, Indiana Code section 35-33-5-2, specifies the minimum information necessary to establish probable cause." *Sisk, supra* at 275. When the affidavit is based on hearsay, it must either contain reliable information establishing the credibility of the source and the declarants and must establish a factual basis for the information, or contain information that establishes that the totality of the circumstances corroborates the hearsay. *Id.*, citing Ind. Code, § 35-33-5-2(b).

In this case, the affidavit was not based only on hearsay. It also contained information directly known to the investigating officers, including that footstep tracks were found in the grass by the victim's home, that a tracking dog tracked to the storage area, and that defendant was near the victim's house at the relevant time. The affidavit indicated that defendant admitted to the latter fact. Moreover, the totality of the circumstances outlined in the affidavit corroborated the hearsay from the victim and the neighbors and supported a finding of probable cause.

In other words, the important information provided by the victim and others, as outlined in the affidavit, was consistent with the officer's own observations or was otherwise confirmed by the police investigation, including that the physical description given by the victim was consistent with defendant's characteristics, that defendant was in the area at the relevant time, that tracks in the grass supported the victim's account of where she was taken by defendant, and that a tracking dog tracked from the area of the assault to the storage area where defendant admitted his car was parked. The search warrant in this case was not premised on an affidavit that contained uncorroborated hearsay information only. Because the affidavit was sufficient to support the Indiana court's finding of probable cause, we affirm the trial court's decision denying defendant's motion to suppress on this ground.

Defendant also argues that the search warrant was invalid because it was not signed by an Indiana or Steuben County law enforcement officer, but was signed by a Michigan state trooper. He fails to cite any authority to support his position that the Michigan trooper who signed the affidavit, the warrant, and the return was not an appropriate law enforcement officer. He also fails to rationalize his conclusion that the Michigan trooper was not qualified to sign the paperwork. Therefore, we deem the issue abandoned. *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998); *People v Connor*, 209 Mich App 419, 430; 531 NW2d 734 (1995).

II

Defendant next raises several issues with respect to the prosecutor's conduct at trial. Defendant did not object to the challenged conduct at trial. Accordingly, these unpreserved issues are reviewed for plain error. *People v Aldrich*, 246 Mich App 101, 110; 631 NW2d 67 (2001), citing *People v Carines*, 460 Mich 750, 752-753, 763; 597 NW2d 130 (1999).

> To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights. The third requirement generally requires a showing of prejudice, i.e., that the error affected the outcome of the lower court proceedings. "It is the defendant rather than the Government who bears the burden of persuasion with respect to prejudice." Finally, once a defendant satisfies these three requirements, an appellate court must exercise its discretion in deciding whether to reverse. Reversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error "'seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings' independent of the defendant's innocence." [*Carines*, *supra* at 763 (citations omitted).]

Error requiring reversal will not be found if the prejudicial effect of the prosecutor's improper conduct could have been cured by a timely instruction. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001).

A

Defendant first argues that, during jury voir dire, the prosecutor did not limit himself to the task of determining whether the potential jurors would be fair and impartial. Defendant claims that the prosecutor improperly disclosed the facts of the case, discussed the DNA evidence, outlined the victim's testimony, suggested that defendant was a liar because he gave different accounts of what occurred, and informed the potential jurors that the evidence against defendant was overwhelming. Defendant cites no authority to support his argument that the challenged voir dire was improper and constitutes plain error requiring reversal. He also fails to explain or rationalize his position. He merely outlines his position and concludes that the prosecutor engaged in misconduct. This is insufficient to properly present this issue for our review. *Kelly, supra.* In any event, we conclude that defendant has failed to establish plain error requiring reversal. We note that his argument mischaracterizes certain aspects of voir dire.

> The function of voir dire is to elicit sufficient information from prospective jurors to enable the trial court and counsel to determine who should be disqualified from service on the basis of an inability to render decisions impartially. In ensuring that voir dire effectively serves this function, the trial court has considerable discretion in both the scope and conduct of voir dire. What constitutes acceptable and unacceptable voir dire practice "does not lend itself to hard and fast rules." [*People v Sawyer*, 215 Mich App 183, 186; 545 NW2d 6 (1996).]

Questioning that is necessary to determine whether a prospective juror should be excused is permissible. *People v Bell*, 209 Mich App 273, 278; 530 NW2d 167 (1995).

Here, the prosecutor's voir dire questions and statements constituted valid probes into the potential jurors' attitudes with respect to scientific evidence, how certain evidence might be viewed, their view of whether a rape victim needs to resist, whether they believed that inconsistent stories demonstrate a lack of veracity, and whether the prosecutor would need to supply a motive for the crime even if the other evidence overwhelmingly supported the prosecutor's case. The prosecutor's questions were designed to test the jurors' receptiveness and attitude toward the anticipated evidence and theories of the case. Defendant has not shown that the prosecutor's conduct during voir dire amounted to plain error.

B

Defendant additionally argues that the prosecutor committed misconduct when he vouched for defendant's guilt both in opening statement and during the direct examination of the detective in charge of the case. A prosecutor may not vouch for a defendant's guilt. *People v Weatherspoon*, 171 Mich App 549, 558; 431 NW2d 75 (1988). A prosecutor may, however, argue from the facts that the defendant is not worthy of belief. *Id.*; *People v Howard*, 226 Mich App 528, 548; 575 NW2d 16 (1997). A prosecutor may even characterize the defendant as a "liar" if the comment is based on the evidence produced at trial. See *id.*

Our review of the prosecutor's opening statement reveals that the prosecutor did not impermissibly vouch for defendant's guilt. The prosecutor outlined the evidence that he expected the jury to hear, including the DNA evidence. He informed the jury that, while defendant initially denied involvement with the victim, he changed his story after being confronted with, or "boxed in" by, the DNA evidence. While the challenged passage of opening statement was argumentative, it did not constitute impermissible vouching. The statement was based on the anticipated evidence. There was no plain error.

We agree, however, that the prosecutor's questions to the detective in charge of the case constituted improper vouching for defendant's guilt. The prosecutor asked the detective several questions designed to elicit that the investigation pointed only to defendant as the perpetrator.[1] The detective testified that the investigation focused only on defendant. He also testified that at no point in time did the information suggest that anyone other than defendant committed the crime. A prosecutor may not argue or suggest that the jury should suspend its own powers of judgment in deference to the police or to the prosecutor. *People v Whitfield*, 214 Mich App 348, 352; 543 NW2d 347 (1995); *People v Humphreys*, 24 Mich App 411, 418; 180 NW2d 328 (1970). We conclude that the prosecutor's questions, which were designed to elicit that the police investigation pointed solely and finally to defendant's guilt, were improper. However, we do not conclude that this improper vouching requires reversal. Defendant cannot meet his burden of persuasion that the error was prejudicial, i.e., that it affected the outcome of the lower court proceedings. *Carines, supra.* Indeed, we conclude that it did not. The testimony and evidence against defendant was substantial and overwhelming. The case was not a mere credibility contest between defendant and the victim. At the time of the crime, defendant was in the area of the victim's home. A dog tracked a scent from the area of the assault to the area where defendant's car was parked. The victim's DNA was found on defendant's penis, and defendant provided inconsistent stories about his reasons for being in the area at the time of the crime; defendant admitted that sexual contact occurred. Moreover, the victim's neighbor heard whimpering near her home at the time of the crime, and the victim's injuries, including vaginal tears, supported the conclusion that the sexual acts were forced. There was no testimony or evidence to support defendant's theory that the sexual contact was consensual. His argument in that respect was based solely on unsupported conjecture.

C

Defendant additionally argues that the prosecutor committed misconduct by resorting to an improper civic-duty argument. An improper civic-duty argument plays on the fears or prejudices of the jury, *People v Cooper*, 236 Mich App 643, 651; 601 NW2d 409 (1999), injects issues broader than the defendant's guilt or innocence, or calls upon the jurors to suspend their

[1] Defendant objected to one of the questions on the ground that the question called for a conclusion. He did not object on the ground that the questions constituted improper vouching for defendant's guilt. An objection on one ground is insufficient to preserve an appellate argument based on another ground. *People v Herndon*, 246 Mich App 371, 413 n 90; 633 NW2d 376 (2001).

powers of judgment, *People v Truong (After Remand)*, 218 Mich App 325, 340; 553 NW2d 692 (1996). In his closing argument, the prosecutor indicated that justice should be done for the sake of the victim, her family, and the system. He further argued that the victim had a right to see justice done. While we agree that these arguments bordered on impermissible civic-duty arguments, they were innocuous and could have been cured by an instruction if one was requested.

D

Finally, defendant challenges the following argument:

> Now, the Defendant had some witnesses, character witnesses. And I'd like to think that, if any of you were accused of a crime, you'd be able to find at least a handful of people that would come in and say that you're a nice guy. I would think even Jeffrey Dahmer (phonetic) could do something like that. In fact, his neighbors thought he was a clean-cut, nice guy.

Defendant argues that, because the jury was invited to compare his character to Jeffrey Dahmer's character, he was denied a fair trial. Defendant relies on *People v Kelley*, 142 Mich App 671; 370 NW2d 321 (1985), wherein this Court reversed the defendant's conviction because the prosecutor referenced John Wayne Gacey when discounting the defendant's character witnesses. In *Kelley*, however, this Court determined that it was likely that the jury compared the defendant's character with Gacey's character, because the comments not only implicated the defendant's character, but also because the comparison between the defendant's crime and the crimes committed by Gacey was inescapable. *Id.* at 673. In this case, we find no such comparison. See also *People v Sharbnow*, 174 Mich App 94, 101-102; 435 NW2d 772 (1989). More importantly, unlike the comments in *Kelley*, the argument in this case was not met with an objection. While the prosecutor's invoking of Jeffrey Dahmer's name as an example was imprudent, it does not constitute plain error requiring reversal. A curative instruction could have cured any prejudice. *Watson, supra.* Defendant has not met his burden of persuasion that the argument affected the outcome of his case. *Carines, supra; Aldrich, supra.*

III

Defendant next raises several sentencing issues. The crimes for which he was convicted occurred in 2001 and, therefore, the legislative sentencing guidelines were applicable. MCL 769.34(2); *People v Greaux*, 461 Mich 339, 342 n 5; 604 NW2d 327 (2000). Defendant was sentenced outside of the recommended minimum sentence range of 81 to 135 months under the legislative guidelines. MCL 769.34(3) provides:

> A court may depart from the appropriate sentence range established under the sentencing guidelines . . . if the court has a substantial and compelling reason for that departure and states on the record the reasons for departure. All of the following apply to a departure:
>
> (a) The Court shall not use an individual's gender, race, ethnicity, alienage, national origin, legal occupation, lack of employment, representation by

appointed legal counsel, representation by retained legal counsel, appearance in propria persona, or religion to depart from the appropriate sentence range.

(b) The court shall not base a departure on an offense characteristic or offender characteristic already taken into account in determining the appropriate sentence range unless the court finds from the facts contained in the court record, including the presentence investigation report, that the characteristic has been given inadequate or disproportionate weight.

In *People v Babcock*, 469 Mich 247; 666 NW2d 231 (2003), our Supreme Court addressed a trial court's responsibilities when departing from the recommended minimum sentence range under the guidelines. It acknowledged that the trial court is required to choose a sentence within the recommended range unless there is a substantial and compelling reason to depart from that range. *Id.* at 255. A majority of the justices agreed that "substantial and compelling" must be construed to mean an objective and verifiable reason that keenly or irresistibly grabs our attention, is "of considerable worth" in deciding the length of the sentence, and exists only in exceptional cases. *Id.* at 257, 271. A majority of justices also held that

> it is not enough that there *exists* some potentially substantial and compelling reason to depart from the guidelines range. Rather, this reason must be articulated by the trial court on the record. Accordingly, on review of the trial court's sentencing decision, the Court of Appeals cannot affirm a sentence on the basis that, even though the trial court did not articulate a substantial and compelling reason for departure, one exists in the judgment of the panel on appeal. Instead, in such a situation, the Court of Appeals must remand the case to the trial court for resentencing or rearticulation. The obligation is on the trial court to articulate a substantial and compelling reason for any departure. . . .
>
> Further, the trial court must go beyond articulating a substantial and compelling reason for *some* departure. Rather, the trial court can depart from the guidelines range only "if the court has a substantial and compelling reason for *that* departure. . . ." MCL 769.34(3) (emphasis added). [*Id.* at 258-259.]

This Court is responsible for determining whether the trial court articulated a substantial and compelling reason to justify its departure from the guidelines range. *Id.* at 261-262. In this case, the trial court departed from the guidelines range of 81 to 135 months and imposed a sentence of thirty-two to fifty-five years' imprisonment. In doing so, the trial court stated:

> Mr. Miller, I was present obviously during the course of the trial. And I must say that I agree entirely with the jury's verdict. The evidence in this case was overwhelming.
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> * * *
>
> And it's not for me, Mr. Miller, to sit here and denigrate you in any way, whatsoever. I would, however, indicate that the defense of consent that was put forth on your behalf at trial, I both found to be futile as well as insulting considering the facts of this case.

> The evidence indicates very clearly that you are a predator. You planned this. You thought it out. You laid in wait. And you took advantage of the unfortunate opportunity that came as you were waiting, as the Court is convinced that you were.
>
> You are to be, very frankly, every woman's - - every person's worst nightmare. Lurking in the dark, in the shadows, accosting an unsuspecting victim, and through force and threats, compelling her to submit to unimaginable assaults on her person.
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> A great number of people, as has been pointed out, have come forward on your behalf. And I suppose what only at this point I perceive through the victim impact statement that was just delivered, is that the tragedy isn't shared only by the victim's family, but by many other people, as well, who think most highly of you.
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> * * *
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> The fact is that, in this case, the Court must consider a large number of facts, as it does in any sentence: rehabilitation, as Mr. Steward mentioned, punishment, the protection of society, the deterrence of others, restitution when possible.
>
> Looking at the factors in this case, and recognizing the sentencing information report and the guidelines suggested in their, quite frankly, I find them totally inadequate in addressing this case.
>
> Mr. Kasian mentioned that this is not the usual sort of thing for any - - or for this community. I must differ. I don't think this is the usual thing that any community should expect. It is an affront to civilized life in this or any other community.
>
> As a consequence, the paramount concern that I have is, not only punishing you, but protecting this and any other community from you in the future. I suppose it would be easy for me simply to impose a sentence of life in prison, as would be permissible. However, I think it would be more appropriate in this case that the Court would sentence you to a minimum term of 32 years in the Michigan Department of Corrections and a maximum term of 55 years.

The trial court did not articulate a substantial and compelling reason for departure as defined by our Supreme Court, thereby failing to meet its obligations under MCL 769.34(3). Although expressing its view that the guidelines were wholly inadequate based on the facts of the case, the court failed to acknowledge that the offense variables take into consideration the severity of the criminal offense. *Id.* at 264. While a trial court may base a departure on an offense characteristic that is already taken into account, it may do so only if it finds that the characteristic has been given inadequate or disproportionate weight. *Id.* at 267-268. The trial court here did not articulate any specific offense characteristic that was given inadequate weight by the guidelines.

In addition, the trial court's departure was nearly three hundred percent above the highest end of the recommended range. The trial court failed to articulate any reason for the particular, extensive departure. We cannot affirm the sentence imposed by the trial court where the court failed to articulate a substantial and compelling reason for the departure. *Id.* at 258-259.

Accordingly, we vacate defendant's sentence and remand for resentencing. On remand, if the trial court determines, consistent with *Babcock*, *supra*, that there is a substantial and compelling reason for departing from the guidelines, it shall state that reason on the record, and also explain why the reason justifies the particular departure imposed. Additionally, the court shall not base a departure on an offense or offender characteristic already taken into account in determining the appropriate sentence range under the guidelines unless the court determines that the characteristic has been given inadequate or disproportionate weight. MCL 769.34(3).

Finally, defendant argues that the trial court erred when it amended the judgment of sentence to add restitution of $226 to be paid to Cameron Memorial Hospital where bodily samples were removed from defendant for analysis. The judgment was amended on the prosecutor's motion, without a hearing, and after defendant had filed his claim of appeal in this Court.

MCR 6.429(A) provides that a trial court may not modify a valid sentence after it is imposed "except as provided by law." MCR 6.435(D) provides that, if a claim of appeal has been filed, corrections to a judgment are subject to MCR 7.208(A) and (B). MCR 7.208(A) limits a trial court's authority to amend a judgment after a claim of appeal is filed except on order of this Court, by stipulation of the parties, or as otherwise provided by law. MCR 7.208(B) allows a defendant, not the prosecutor, to file a motion for resentencing after a claim of appeal has been filed and imposes certain time frames for filing the motion. Here, the trial court's amendment of the judgment of sentence after the claim of appeal was filed, on the prosecutor's motion, was improper. Indeed, the prosecutor concedes that the trial court may have been without authority to amend the judgment of sentence. Accordingly, we vacate the portion of the amended judgment ordering restitution. The trial court may revisit this issue on resentencing, at which defendant shall be afforded an opportunity to respond.[2]

We affirm defendant's convictions, vacate defendant's sentences, and remand for resentencing. We do not retain jurisdiction.

/s/ Richard Allen Griffin
/s/ Janet T. Neff
/s/ Christopher M. Murray

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[2] Although we express no opinion on the issue, we note that in *People v Newton*, 257 Mich App 61; 665 NW2d 504 (2003), this Court recently held that "the general cost of investigating and prosecuting criminal activity" is not direct financial harm as a result of a crime and, therefore, may not be ordered as restitution under MCL 780.766(1).